

INTELLECTUAL LIBERTY AND LITERARY STYLE.

BY THEODORE SCHROEDER.

ONE'S attitude toward free speech or toward popular or established ideas and institutions is, I believe, always a matter of temperament. So in the field of religious discussion we have men like J. W. Gott of England and Michael X. Mockus of America, who are compelled to come in frequent conflict with the blasphemy laws, largely because of their inability (unwillingness) to conform their public discussions to the amenities customary in the drawing-room. These temperaments, in imitation of the absolute, have their counterpart among industrial agitators, judges and millionaires. My own judgment is that they would all be more efficient in enlarging human understanding if they were more considerate of the feelings of others. In the absence of such considerateness their function is limited to furnishing intellectualizations and rationalizations to those whose emotional conflicts leave them in need of such props. When these intense and inefficient "propagandists for evil" come before a judge who is a victim of similar emotional conflicts, then their very inefficiency in promoting "evil" is made the excuse for a more severe punishment, and for excluding them from the beneficence of statutory or constitutional toleration.

Sir Robert Le Estrange, once chief censor of England, in his refutation of Richard Baxter says: "They [the Dissenters] labor to promote the cause by scandalous and rank invectives, against the Church, and stirring-up of tumults to reform it: by a loud pharisaical ostentation of their own holiness, and a sour churlish censure of all others: by sharp and sawcy aspersions upon the Royal party and by reflections yet more bitter and audacious upon his Sacred Majesty and his murdered father.... A tumult for religion is within one step of rebellion."¹ Obedience to the King

¹ In the introduction to *Interest Mistaken or, the Holy Cheat*, 3d impression, London, 1662. (Pages not numbered.)

was a divine precept. It is just for such impatient men as Baxter, and for the protection of such speakers as those above described that the free-speech issue was fought out, both for the religious and the governmental heretic.² It is for the very purpose of suppressing the physical violence, which the common law directed against the irritation of mere verbal violence from the impatient critics, that free-speech guaranties were written into our American constitutions. This liberal attitude was based upon the sound psychologic doctrine that the relief of an emotional repression through an explosion in passionate words is the best way of precluding a would-be speaker from resorting to physical violence.³ The better remedy against overt acts of violence from the audience is rightly believed to consist in exhibiting to it a better argument, expressive of a better temper, and the product of a more mature understanding.

Feudal-minded judges whose illiberal temperament is perhaps the product of much thwarted and repressed passion, tell us from their seats of judicature and learning that intellectual liberty consists in the right to discuss anything with impunity so long as the amenities of polite discourse are preserved by the absence of scurrility, abuse, invective and the like. In other words, the judge's vanity must be protected by criticizing his views with abjectly humble poses.

In a blasphemy case Lord Denham put it thus: "Discussions on a subject, even the most sacred, might be tolerated when they were conducted in a fair spirit. But when appeals were made not to reason but to the bad feeling of human nature, or where ridicule or invective were had recourse to, it could not be considered discussion."⁴ In like manner do even our own unconscious aristocrats justify their feudal-mindedness, by exhibiting the same irritable temperament as those who are accused of transcending the limits of conventional intellectual hospitality. It is in the very likeness of their autocratic dispositions that we find the true explanation

² Cf. the writer's *Constitutional Free Speech Defined and Defended*, especially Chaps. 20-21; also: *Free Speech for Radicals*, enlarged edition, especially Chap. 8.

³ For confirming quotations see *Free Speech for Radicals*, pp. 21-22.

⁴ *A Full Report of the Trial of Henry Hetherington on an Indictment for Blasphemy*, 1840, p. 22. See also: *U. S. v. Harman* 45 Fed. Rep. 415-16, 423. Sir Fitzjames Stephens, *Digest of the Criminal Law*, p. 97. For contrary view, viz., that an unoffending style enhances "evil," see: *U. S. v. Smith* 45 Fed. Rep. 477. For an elaborate discussion see Peter Bayle, *Historical and Critical Dictionary*, 2d ed. His treatise "An Explanation Concerning Obscenities" is republished in the writer's *Free Press Anthology*, pp. 114-148.

for the very hearty hostility toward each other, which may be at times exhibited between such persons as the Ex-Kaiser, William Hohenzollern, the Anarchist Emma Goldman and the late tempestuous Theodore Roosevelt.⁵ It is the conflict of absolutes, in an impatient contest for power and authority.

The opponents of censorship held a different view from that of Lord Denham. In America they found a voice in Dr. Benjamin Rush who held intellectual intercommunication was needed for "conveying *heat and light* to every individual in the Federal Commonwealth."⁶ Likewise the Continental Congress declared for freedom of the press, "whereby oppressive officials are *shamed or intimidated* into more honorable or just modes of conducting affairs."⁷ These and other declarations like them, from Roger Williams, James Madison and Thomas Jefferson,⁸ negative the idea that constitutional mental liberty was to depend upon politeness of style.

No one who ever made a fight for the *unabridged* intellectual liberty guaranteed by our constitutions ever dreamed of creating a stylists' aristocracy. Such men conceived of intellectual liberty as a general human "right," not a special privilege for the few who had attained some approved degree of rhetorical or oratorical culture. The cultured and culturined defenders of things as they are have always enjoyed unlimited intellectual liberty. The inherent and inalienable human "rights" sought to be protected by our constitutions did not take account of the ruffles and frills by which some discourses are adorned. If constitutional free speech is recognized as a "human right," then every human must have an equal "right" to express his own ideas, in his own way, with his own vocabulary, in the service of his own temperament. If equality of human "right" in relation to religious, political or economic opinion is to be observed, then the crudest artisan has the same "right" to portray his ignorant opinions, in his own ill-tempered fashion, as has the cultured priest to express a contrary opinion in a more efficient manner. The more educated and refined defenders and beneficiaries of things as they are, have enough advantage in their superior scholarship, without being given the aid of the policeman, or the power of a feudal-minded judge. Those who can, by

⁵ For a composite psychologic picture of the first and last, see the writer's "Psychology of an Ex-Kaiser," in the *New York Call*, June 15, 1919.

⁶ Niles, *Principles and Acts of the Revolution*, p. 235.

⁷ *Journal of Continental Congress*, Vol. I, p. 108, edition of 1904.

⁸ Cf. *Constitutional Free Speech, Defined and Defended*, Chaps. 20-21; also *Free Speech for Radicals*, enlarged ed., pp. 108-111..

an orator's or author's bad taste, be so influenced that they are blind to the larger problems of equality in human "constitutional rights," may be led to define liberty and equality, in relation to intellect, to consist in protecting the standpatter's "right" to attack atheists and agnostics, pacifists and industrial heretics or sex-reformers, with all the scurrility, invective and abuse that he can command, while the proponent of the unpopular idea may attack the orthodox opinions only according to the most polite and approved-of parlor etiquette, used with the humble prostration of intellect.

However, no friend of equal liberty, such as our constitutions were designed to guarantee, can give his approval to such an interpretation of intellectual liberty. Only those who forget the requirement of equality in liberty and are seeking a plausible excuse for protecting and perpetuating "spiritual tyranny" and general reaction will ever define our constitutional guaranties as do our modern courts, in following the precedent of the Star Chamber court. It is only on rare occasions that judges have that democratic temperament which make possible the calm acceptance of the more mature views of Roger Williams, James Madison and Thomas Jefferson.

It is related of the Duke of Guise, an ardent Romanist, that during the siege of Rouen a Protestant was brought to him who confessed a design upon his life. The Duke dismissed him thus: "Get thee gone. If thy religion commands thee to assassinate those who never offended thee, mine will have me give thee thy life, though I may justly deprive thee of it. Judge of the two religions which is the best."⁹ Catholics like the Duke of Guise, and Protestants like Roger Williams seldom find the road to the legislative hall or to the judicial bench. Let us hope that the time will come when judges, legislators and policemen, will be as tolerant of opposition and as patient over verbal resistance as they expect the industrial and religious heretics to be over that which is to them a painful and material affliction.

⁹ Bayle's *Historical and Critical Dictionary*, 2d ed., III, 289.